

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)	
PHARMACY, INC. PRODUCTS LIABILITY)	
LITIGATION)	
_____)	MDL No. 2419
)	Dkt. No 1:13-md-2419 (FDS)
THIS DOCUMENT RELATES TO:)	
)	
Suits Naming Saint Thomas Outpatient)	
Neurosurgical Center, LLC)	
_____)	

The Tennessee Clinic and Health Care Provider Defendants’
Response to the PSC’s Motion for Entry of
Bellwether Trial and Pre-Trial Scheduling Order

Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John W. Culclasure, MD; Debra V. Schamberg, RN; Specialty Surgery Center, Crossville, PLLC¹; Kenneth R. Lister, MD; and Kenneth Lister, MD, PC (collectively “the Tennessee Defendants”) file this Response to the PSC’s Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order [Dkt. 837].

For their response, the Tennessee Defendants attach:

- (1) A letter from counsel for the Tennessee Defendants to Gerard Stranch, IV of the Plaintiffs’ Steering Committee (“PSC”) outlining the problems with the PSC’s proposed Case Management Order²;
- (2) An affidavit from C.J. Gideon, Jr., lead counsel for the Tennessee Defendants, setting forth his trial calendar for 2014³;
- (3) A proposed Case Management Order for Common Issue Fact and Expert Discovery, with reasonable deadlines, utilizing the PSC’s proposed Case Management Order as a starting point⁴; and

¹ The Tennessee Defendants intend to meet and confer with the PSC regarding entry of a comparable Case Management Order governing common discovery for Specialty Surgery Center, Crossville, PLLC, Kenneth Lister, MD and Kenneth Lister, MD, PC. Anticipating that similar disputes with the PSC will arise, Specialty Surgery Center, Crossville, Kenneth Lister, MD, and Kenneth Lister, MD, PC join in this response.

² Exhibit A.

³ Exhibit B.

- (4) A separate proposed Case Management Order for Bellwether Selection and Case-Specific Discovery, without deadlines, using the basic framework set forth in the PSC's Proposed Case Management Order as a starting point⁵.

The letter to the PSC, attached as Exhibit A, adequately sets forth the Tennessee Defendants' substantive response to the PSC's motion, and the Tennessee Defendants incorporate the content of the letter in this response.

The Tennessee Defendants respectfully move the Court to enter their proposed Case Management Order for Common Issue Fact and Expert Discovery. If the Court is inclined to enter a Case Management Order regarding bellwether selection and case-specific discovery, the Tennessee Defendants respectfully request that the Court enter their proposed Case Management Order for Bellwether Selection and Case-Specific Discovery, without setting specific deadlines, at this point, for the reasons stated in the responsive letter of February 5, 2014.

⁴ Exhibit C.

⁵ Exhibit D.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 5th day of February, 2014.

/s/ Chris J. Tardio

Chris J. Tardio

⁶ Admitted pursuant to MDL Order No. 1.

⁷ Admitted *pro hac vice*.